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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, PETITIONER

v.

ARIADNE SHIPPING COMPANY, LIMITED, AND EVANGELINE STEAMSHIP COMPANY, S.A.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD CIRCUIT, STATE OF FLORIDA

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

INTEREST OF THE NATIONAL LABOR RELATIONS BOARD

The first question presented in this case (Pet. Br. 2), in which certiorari was granted on October 13, 1969, is "Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port." The answer turns upon whether the conduct involved is "arguably subject" to the National Labor Relations Act; if it is, the subject of the suit is preempted.

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236, 245. The state courts held that there was no preemption, on the authority of *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10 and *Incres Steamship Company* v. *International Maritime Workers Union*, 372 U.S. 24, which held that the Act is not applicable to labor disputes concerning the maritime relations of foreign-flag vessels with their alien crews. The question whether those holdings extend to longshore operations in American ports involves the Board's jurisdiction over an important area of labor relations. For the reasons given below, we believe that *Sociedad* and *Incres* are not controlling and that this conduct, unlike that involved in those cases, is subject to the National Labor Relations Act and hence that the state courts are without jurisdiction to regulate it.

STATEMENT

Respondents Ariadne Shipping Company, Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation, are engaged in the operation of cruise ships which transport passengers from Port Everglades and Miami, Florida, to various points in the West Indies and Carribbean. The two ships employed for these cruises are the *S.S. Ariadne*, a Liberian-flag vessel, and the *S.S. Bahama Star*, which is of Panamanian registry. Both ships have crews of foreign seamen. (A. 3a–5a.)[1] The loading and unloading of baggage,

[1] "A." references are to the portions of the record printed in the Appendix.

cars, supplies, and other cargo carried aboard the ships, however, is performed in part by American residents (A. 28a, 39a, 44a–45a). Petitioner International Longshoremen's Association, Local 1416, AFL–CIO, is a labor organization representing longshoremen in the Miami, Florida, area (A. 4a).

In early May 1966, the Union established picket lines on the public docks of Miami and Port Everglades adjacent to the berths where the *Ariadne* and *Bahama Star* were docked. The pickets carried signs and placards and distributed handbills alleging that (1) the nonunion longshoremen who were employed to load and unload the ships were paid substandard wages, and (2) the ships were unsafe. This initial picketing was directed not at the ships themselves, but at Eastern Steamship Lines, Inc. (Eastern), a Florida corporation which performs a variety of services as respondents' "general agent".[2] On May 20, 1966, Eastern obtained a temporary injunction against the Union's activities from the Circuit Court for Dade County, Florida. See *International Longshoremen's Association, Local 1416, AFL–CIO* v. *Eastern Steamship Lines, Inc.*, 211 So. 2d 858, 859 (Fla. App. 1968), affirming the decision of the Circuit Court. The court, rejecting the Union's contention that state court jurisdiction was preempted by the National Labor

[2] See *Eastern Steamship Lines, Inc.*, 161 NLRB 458, where the Board, in an advisory opinion, found that Eastern met the Board's jurisdictional standards. The Board also found that it was Eastern which hired the stevedores to service the ships. *Id.* at 458–459. See also deposition of Timothy F. Kane, at pp. 28–29, 32–33 of the certified record of this case on file with the clerk.

Relations Board, concluded that the Union's dispute was with the foreign flag vessels themselves, and thus outside the Board's jurisdiction under *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10.

Shortly after entry of the injunction against the picketing of Eastern, the Union commenced to picket respondents' vessels themselves, and the vessel owners brought the present suit in the Circuit Court of Dade County, to enjoin that activity too. Picketing occurred in two locations—near the vessels and in front of the terminal through which passengers embarked and disembarked. The uncontradicted evidence introduced at the state court hearing showed that the picketing near the vessels was to publicize the claim that the work of loading and unloading the ships' cargo—work performed in part by American residents and in part by the ship's crew—was being done under substandard wage conditions (A. 44a–45a, 52a). The pickets displayed their substandard wage signs whenever the vessels docked. In front of the terminal, the Union picketed with signs alleging that the ships were unsafe, and passed out handbills to the same effect (A. 44a).

On May 26, 1966, the Circuit Court again issued a temporary injunction against the Union's picketing. It found that the Board lacked jurisdiction over the Union's activities and that there was no labor dispute; that the state court thus had jurisdiction to enjoin picketing in violation of Florida law; that the picketing did violate state law; and that an injunction would not constitute an infringement of con-

stitutionally protected free speech (A. 46a). The court's order (A. 16a) prohibited:

> 1. Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;
>
> 2. Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiff's vessels are unsafe;
>
> 3. Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;
>
> 4. By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs.

In this Court, the Union seeks review only of paragraph 3 of the injunction, which was directed at the picketing near the vessels (n. 4, *infra*).

On interlocutory appeal, the District Court of Appeals for the Third District of Florida affirmed the trial court's conclusions as to jurisdiction, citing *McCulloch* v. *Sociedad Nacional, supra,* and *Incres Steamship Company* v. *International Maritime Workers Union,* 372 U.S. 24 (A. 48a). The trial court then entered an order making the injunction permanent (A. 47a). On appeal the District Court of Appeals, except in one respect not relevant here,[3] affirmed

[3] The district court set aside paragraph 4 of the injunction as too broad (A. 53a).

the permanent injunction. The district court ruled that the testimony before the trial court tended to show: "(1) that the union was concerned with safety conditions aboard the two foreign vessels; and (2) that the union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages" (A. 52a). It held that the injunction was justified although it barred the Union not only from complaining about the safety of the ships (paragraphs 1 and 2, *supra,* p. 5),[4] but also from protesting the substandard wages paid the longshoremen (A. 53a). The Supreme Court of Florida refused to review the district court's judgment (A. 55a).

ARGUMENT

THE STATE COURT LACKED JURISDICTION TO ENJOIN THE UNION'S PICKETING AGAINST THE CONDITIONS UNDER WHICH THE LONGSHORE WORK WAS BEING PERFORMED

In *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 245, this Court held that the jurisdiction of the National Labor Relations Board is exclusive and preemptive as to activities which are "arguably subject" to regulation under Sections 7 or 8 of the National Labor Relations Act. The states are thus prohibited from providing a remedy for disputes over which the Board might assert jurisdiction. In this case, the state court relied on *McCulloch* v. *Sociedad Nacional,* 372 U.S. 10, and *Incres Steamship Company*

[4] With respect to those portions of the injunction, the Union had by that time abandoned its appeal. It is not seeking review of them here (Pet. 4, n. 2).

v. *International Maritime Workers Union,* 372 U.S. 24, to conclude that the activity in question—union picketing in protest over the wages paid nonunion longshoremen engaged in loading and unloading certain foreign vessels—was beyond the reach of the Board's regulatory power; and hence that it could enjoin the picketing as contrary to Florida law. We submit, however, that *Sociedad* and *Incres,* both of which involved the shipboard labor relations of foreign vessels and their foreign crews, are inapplicable in a case involving longshore operations in an American port, performed in part by American residents; that the Board has jurisdiction over such operations even though they may involve a foreign flag ship; and that the state court's order should be vacated for lack of jurisdiction insofar as it enjoins picketing relating thereto.

1. The Union's picketing to protest substandard working conditions would clearly be subject to regulation by the Board if directed at a domestic employer. If such activities were found to be aimed at organizing nonunion employees, or forcing their employer to recognize the picketing union as their bargaining representative, there would be a potential violation of Section 8(b)(7)(C) of the Act (Pet. Br. 42–43), which prohibits organizational or recognitional picketing when continued for more than 30 days without a representation petition having been filed. Moreover, even if the Union's picketing efforts were addressed solely to the public, as distinguished from employees, and were thus within the exception created by the second proviso to that section, there might nevertheless

be a violation of the Act, since the proviso applies only where it is shown that the picketing in question has not interfered with deliveries or otherwise disrupted the employer's business (Pet. Br. 43). Similarly, if the Union's picketing resulted in involving other, neutral employers in the dispute, its objectives might be secondary and thus proscribed by Section 8(b)(4)(B) of the Act. (Pet. Br. 40–41). See *Sailors' Union of the Pacific*, 92 NLRB 547.

On the other hand, if the sole objective of the Union were to protest a failure to conform to area wage standards, then its activities would be proscribed by neither Section 8(b)(7)(C) nor Section 8(b)(4)(B), and presumably would be either protected by Section 7 of the Act (Pet. Br. 39–40), or within the area which Congress intended to leave to the free play of economic forces. *Houston Bldg. & Construction Trades Council* (*Claude Everett Construction Co.*), 136 NLRB 321. As the Court observed in *Garner* v. *Teamsters Union*, 346 U.S. 485, 499–500, the "policy of the National Labor Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing."

2. The question, therefore, is whether the Board is without jurisdiction because the Union's dispute is with a foreign flag vessel rather than a domestic employer. We submit that the Board has jurisdiction over all labor disputes involving longshore work done in an American port by American residents, whether or

not that is performed in connection with a foreign flag vessel. The Board regularly exercises jurisdiction over longshore operations involving foreign ships where the immediate employer of the longshoremen is a domestic stevedoring company rather than the vessel itself. See, *e.g., National Labor Relations Board* v. *International Longshoremen's Association, Local 1355,* 332 F. 2d 992 (C.A. 4) (refusal of union hiring hall to refer work gangs to American employer who had contracted to perform services aboard boycotted foreign ship); *Marine Cooks and Stewards Union* (*Matson Terminals, Inc.*), 156 NLRB 753 (dispute over work assignments of American longshoremen employed by domestic stevedoring company in unloading foreign vessels). Although here the American workers appear to have been hired by Eastern, an American intermediary, the Board would have jurisdiction over domestic longshore operations even if a foreign ship directly hired the American workers who loaded and unloaded their ships. Thus, in *New York Shipping Association,* 116 NLRB 1183, the Board established a single bargaining unit for the longshore employees employed by all the member of the Association, which included such foreign shipping companies as Argentine State Line, Belgian Line, Inc., Chilean Line, and Cunard Steamship Co., and French Line. Similarly, in *International Longshoremen's and Warehousemen's Union, Local 13* (*Princess Cruises Co.*), 161 NLRB 451, the Board asserted jurisdiction under Section 10(k) of the Act, 29 U.S.C. 160(k), to resolve a jurisdictional dispute over the assignment of work similar

to that involved here—loading and unloading baggage on a foreign cruise ship—and awarded that work to American longshoremen who had been hired directly by the foreign shipping company (161 NLRB at 453–454, 457).

3. *McCulloch* v. *Sociedad Nacional* and *Incres Steamship Company* v. *International Maritime Union, supra,* do not undermine the foregoing decisions or foreclose the exercise of Board jurisdiction here. In *Sociedad,* the question was whether the Board could direct a representation election among a group of foreign seamen who were employed on a Honduran flag ship under Honduran shipping articles—whether the Act extended to "maritime operations of foreign-flag ships employing alien seamen" (372 U.S. at 13). In *Incres,* the question was whether the National Labor Relations Act applied to picketing by an American union which was attempting to organize the alien seamen who worked aboard a Liberian vessel under Liberian shipping articles (372 U.S. at 25–26). This Court, citing its earlier decision in *Benz* v. *Compania Naviera Hidalgo,* 353 U.S. 138,[5] answered both questions in the negative. The reasoning underlying these deci-

[5] In *Benz,* the Court held that the Act did not bar state court jurisdiction over a damage action arising from the picketing of a foreign vessel, temporarily in an American port, by an American union acting in support of a strike over the wages and working conditions of the ship's alien crew (353 U.S. at 139–140). The Court noted that the underlying dispute "arose on a foreign vessel" and was "between a foreign employer and a foreign crew operating under an agreement made abroad under the laws of another nation" (*id.* at 142).

sions, however, is inapplicable to the different situation here.

In *Sociedad* and *Incres,* the decision did not turn solely upon the fact that the employers were foreign flag vessels. Rather, it was the identity of the employees and the nature of the labor relations involved—alien seamen, working aboard a foreign ship under foreign shipping articles—which led the Court to construe the Act as not encompassing the labor controversy. In *Socieded,* the Court reasoned that application of the Act "might require that the Board inquire into the internal discipline and order" of the foreign vessel, an activity certain to "raise considerable disturbance not only in the field of maritime law but in our international relations as well" (372 U.S. at 19). Moreover, to permit such Board inquiry would have been contrary to the "well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship" (*id* at 21).

These considerations are largely absent here. The dispute in issue centers around the working conditions of a group of American longshoremen, employed exclusively on the docks of American ports. Although it appears that these longshoremen sometimes work in conjunction with foreign crew members in loading and unloading the foreign ships, there is no evidence that the longshoremen perform any regular crew work or are in any way involved in those internal affairs of the ships which would be governed by foreign

law.[6] In these circumstances, there is no sound basis for holding that the Act does not apply to the Union's dispute over the longshore work here. Otherwise, labor relations in one segment of the American longshore industry would be subject to comprehensive regulation by the Board under federal law, while such relations in another and perhaps the larger portion of the industry, that involving foreign flag ships, would be left to the potentially conflicting laws of the various states. This would result in the very lack of uniformity and the consequent "frustration of national purposes" which the *Garmon* preemption principle seeks to avoid (see 359 U.S. at 244).[7]

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[6] Were the longshore work done entirely by the ship's foreign crew under its contract with the ship, there might be reason for the apprehensions which informed this Court's decisions in *Sociedad* and *Incres*. Any such arrangement would be highly unusual, however, and the question does not arise on the facts of this case. Here, American longshoremen were locally hired to do the longshore work, and the Union was seeking to carry its dispute to them. Were there any risk of improperly involving the ship's crew, that could be accommodated in the first instance by the Board in any proceedings before it. And see n. 7, below.

[7] Insofar as the Union's picketing may have had the additional objective of protesting the labor conditions aboard the ships, this would, at most, have justified an injunction proscribing only that objective (see paragraphs 1 and 2 of the injunction, *supra*, p. 5, which the Union does not challenge here). It would not justify barring the picketing insofar as it was directed at the longshore work (paragraph 3 of the injunction, *supra*, p. 5). See *Youngdahl* v. *Rainfair*, 355 U.S. 131.

CONCLUSION

For these reasons, the judgment of the District Court of Appeal, Third Circuit, State of Florida, should be reversed insofar as it sustains paragraph three of the injunction, and the case should be remanded with directions to vacate that portion of the injunction.

Respectfully submitted.

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